

**CORRECTED OPINION
CONDITION NO. 2**

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/board.asp

Case No. S-2669

PETITION OF OAKVIEW RECREATION CORPORATION

OPINION OF THE BOARD

(Opinion Adopted September 20, 2006)

(Effective Date of Opinion: November 1, 2006)

Case No. S-2669 is an application for a special exception, pursuant to Section 59-G-2.43 of the Montgomery County Zoning Ordinance, to permit the construction and operation of a telecommunication facility. The application includes a request for administrative modification of the underlying special exception, Case No. CBA-379, which the Board granted on December 15, 2005, to permit the construction and operation of a community swimming pool. The Hearing Examiner for Montgomery County held a hearing on the application on June 16, 2006, and on July 25, 2006, issued a Report and Recommendation for approval of the special exception.

Decision of the Board: Special exception granted subject to
the conditions enumerated below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on September 20, 2006. After careful consideration, and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception, subject to the following conditions:

1. The Petitioners shall be bound by all of the exhibits of record, and by the testimony of their witnesses and the representations of counsel identified in the Hearing Examiner's Report and Recommendation and in the Opinion of the Board.
2. The Board **grants** the requested modification of Case No. CBA-379 to reflect the proposed telecommunication facility.

3. The Petitioners shall provide a certified arborist or licensed tree professional to perform root pruning and tree trimming within the adjacent forest. The arborist must be at the pre-construction meeting and present during construction.
4. The Petitioners shall contact an M-NCPPC inspector for pre-construction inspection of tree protection measures and authorization to begin tree clearing.
5. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.
6. Department of Permitting Services requirements for stormwater quality and quantity control must be fulfilled prior to issuance of sediment and erosion control permits.
7. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the Petitioners must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure as authorized in the building permit.
8. The telecommunication facility must display a contact information sign, no larger than two square feet, affixed to the outside of the equipment enclosure. This sign must identify the owner and the maintenance service provider and provide the telephone number of a person to contact regarding the installation. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.
9. There will be no antenna lights or stroboscopic lights unless required by the Federal Communications Commission.
10. There will be no outdoor storage of equipment. Equipment will be stored as provided in the Site Plan (Exhibit 19).
11. Each owner of the telecommunications facility is responsible for maintaining the facility in a safe condition.
12. The facility shall be available for co-location of up to three carriers.

13 The telecommunications facility must be removed at the cost of the owner of the telecommunications facility when the facility is no longer in use by any telecommunications carrier for more than 12 months.

On a motion by Angelo M. Caputo, seconded by Caryn L. Hines, with Wendell M. Holloway and Donna L. Barron, Vice Chair in agreement, and Allison Ishihara Fultz, Chair necessarily not participating, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Donna L. Barron
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 1st day of November, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.